THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

W.P. No. 22799 of 1999

Dated:13.12.2007

Between:
Balaji Triambakrao Karvande.

..Petitioner.

and

Sri Satya Sai Insititute of Higher Medical Sciences, Prasantha Gram, Puttaparthy, Ananthapur District, rep. by its Superintendent and others.

..Respondents.

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ORDER

This petition is filed seeking a direction to respondents 2 to 4 to register a crime against the first respondent for removal of kidney of the petitioner, ostensibly for the purpose of transplanting it in the body of his father and for not transplanting the same in the body of his father and for award of Rs.20,00,000/- as compensation to him as damages from the first respondent, for the above lapse.

2. The case of the petitioner is that after he admitted his father, who was suffering from renal problem, in the first respondent institution he was informed that the kidney of his father should be transplanted and so he offered to give his kidney for transplantation, whereupon one kidney of his was removed from his body and was informed that his removed kidney was transplanted in the body of his father, who was under dialysis till 07.01.1995. Thereafter, he took his father to Maharastra Institute of Medical Sciences at Latur on 07.08.1995 where he was informed that the kidney allegedly transplanted is not found and thereafter his father died and was burried. After he made a complaint to the police in connection with the death of his father,

the body of his father was exhumed and post mortem examination was conducted on the body of his father, which revealed that no kidney transplantation took place in the body of his father and so he gave another complaint to the third respondent on 04.08.1997 and sent a copy thereof to the second respondent by registered post, but no FIR is registered so far. Hence, this petition.

3. The Director of the first respondent Institution filed his counter-affidavit on behalf of the first respondent inter alia contending that inasmuch as the first respondent is not a State or an instrumentality of the State, no petition under Article 226 of the Constitution for the relief sought against it is maintainable. The father of the petitioner, who was suffering from renal failure since 10 months prior to his admission in the first respondent institution, which gives free treatment, on 31.05.1994 as in patient underwent haemodialysis (removal of toxic substances accumulated in the blood in kidney failure patients). After investigation, as it was found that he needed a renal replacement therapy, after all the facts of renal transplantation were explained in great detail to the petitioner and his father, and were asked to get first degree blood related donor for further evaluation for transplantation, petitioner voluntarily agreed to donate his kidney to his father. So, after necessary tests, the left kidney of the petitioner was removed and was transplanted in the body of his father in the right iliac fossa region, which is also established by the computer scanned image of the father of the petitioner. As per the ultrasound study done on 20.07.1994, the transplanted kidney was found to be 7.9 x 4.4 cms in size with normal Echo-texture and mild splaying of the pelvic

calyceal region in the middle. A small amount of fluid was also noted near both poles of the said kidney. Even after he was discharged from the hospital, the father of the petitioner was given regular hemodialysis in 72 sittings up to 07.01.1995 in the first respondent Institution. In fact during the post surgery period of the father of the petitioner, Anita and Smt Phoolaben, sister and relative of the petitioner, were investigated for consideration as donors for the second transplant, but as they were found to be unfit as donors, second transplant could not be undertaken. The averment that the petitioner and his father were cheated and that the removed kidney of the petitioner was not transplanted in the body of his father and was misused is not true. Even, the post mortem report dated 14.12.1995 issued by the Medical Officer, Latur, reveals existence of a scar of operation on the right side of the abdomen with his left kidney semiputrified, right kidney intact but softened and the right iliac fossa contain a calcified mass. The histopathology report dated 02.01.1996 showed a mass 7x4x3 cms near the urinary bladder, irregular, nodular with area of calcification autolysis. In his final report dated 17.08.2006 the Medical Officer, Latur, stated that he cannot give the final opinion due to autolysis of heart, liver, lung and kidneys etc. So it is easy to see that the father of the petitioner did undergo a kidney transplantation and so petitioner is not entitled to any of the reliefs sought.

4. The Deputy Superintendent of Police, Puttaparthy, filed his counter-affidavit on behalf of respondents 2 and 4 inter alia stating that the investigation revealed that the father of the petitioner who

was suffering from severe renal failure and anemia was given dialysis free of cost in 15 sittings before transplant surgery and in 72 sittings after the transplant surgery conducted on 16.06.1994, and was discharged on 07.07.1994. No question of negligence on the part of the police at Puttaparthy arises as the petitioner never approached any police officer at Puttaparthy. After the representation of the petitioner, received through registered post in the office of the D.G. & I.G.P., A.P., Hyderabad, was forwarded to the Superintendent of Police, Anathapur, for necessary action. It was forwarded to him for enquiry and report. During the course of enquiry, the case sheet of the father of the petitioner, and the correspondence between the petitioner and the hospital authorities were examined and a copy of the discharge summary report of the father of the petitioner was also obtained which indicated primary non-function of the transplant kidney due to vascular occlusion. The specialists stated that in view of lapse of more than one year from the date of transplant the non-functional transplant kidney must have undergone degeneration and fibrosis, and that a transplanted non-functional organ would not retain its normal shape, size or contours. The post mortem certificate of the father of the petitioner shows the existence of a classified autolysed mass of 7x4x3 cms adherent to the bladder, which fits aptly into the position and description of the transplanted kidney. In view thereof the second respondent, submitted a final report to the competent authority after notice to the petitioner, which was acknowledged by him on 13.03.1997,and so the case was closed by the competent authority.

5. Heard the counsel for petitioner, counsel for first respondent and the Government Pleader for Home.

6. The ostensible grievance of the petitioner is about the police not taking any action on the complaint of the cheating and fraud alleged by him against the first respondent. In the counter affidavit filed on behalf of respondents 2 and 4 it is stated that petitioner did not give any complaint to the police at Puttaparthy and after the representation sent by the petitioner to the I.G and D.G.P was forwarded to the police at Puttaparthy, a final report, after notice to the petitioner was submitted to the competent authority. Petitioner did not file a reply affidavit disputing the said fact.

7. When the petitioner did not even lodge a complaint to police at Puttaparty, no question of inaction on their part arises. If the petitioner is aggrieved by the final report submitted by the police or if he felt that police are intentionally delaying registration of the crime he has to approach the Magistrate and seek appropriate relief, but cannot file a writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India, as held by the Apex Court in **ALEQUE PADAMSEE v UNION OF INDIA**[1].

8. In fact petitioner under the garb of seeking a direction to respondents 2 to 4 to investigate into the case sought damages of Rs.20,00,000/- from the first respondent, which admittedly is neither a State nor an instrumentality of the State nor is being run with the grants or funds given by the State. So even assuming that what all is stated by the petitioner is true, question of this Court issuing any writ against the first respondent directing it to pay any damages to the petitioner does not arise. Moreover, the averments

made by the petitioner in his affidavit relating to his removed kidney not being transplanted in the body of his father are denied by the first respondent. As disputed facts cannot be decided or gone into by a writ Court, the appropriate remedy for the petitioner, for any relief against the first respondent, can only be in a civil Court but not by invoking the jurisdiction of this Court under Article 226 of the Constitution.

9. Hence, the Writ Petition is dismissed with costs.

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C.Y.SOMAYAJULU, J

Dated: 13.12.2007

SJ

[1] (2007) 6 Supreme Court Cases 171